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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/798,465  | 03/11/2004  | Michael D. Laufer    | FST002              | 6106             |
| 7590  | 08/24/2005  |                      | EXAMINER            |                  |
| Sanjay Bagade<br>1340 Space Park Way<br>Mountain View, CA 94043 |             |                      | DAWSON, GLENN K     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3731                |                  |

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/798,465             | LAUFER ET AL.       |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Glenn K. Dawson        | 3731                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-35 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-35 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.<br>   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03-11-2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to provide antecedent basis for "the connecting portion having a lower modulus of elasticity than either of the anchors, and the fastener has pores to facilitate tissue ingrowth.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-35 are rejected under 35 U.S.C. 102(e) as being anticipated by

DeVries, et al.-2004/0044364.

DeVries discloses a tissue fastener having two end anchor portions connected by a middle connecting portion. Many different embodiments are disclosed but many have expanding anchors and some also have an expanding connecting portion. The anchors either expands due to an absence of a constraining force or can be inflated or expand due to shape memory. The connecting portion is elastic and can place a converging

force upon the two end anchors thus capturing tissue therebetween. See paragraph 44,50,53,54,5993,96-98.

Claims 1-5,7,8,10,11,14,15,17,18,20,21,28,29,32,33 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Jones, et al.-6723108.

Jones discloses a tissue fastener having two end anchor portions 26, 28 and a middle connecting portion-helical wire. The end portions expand upon contact with body fluid and the spring wire could act to bias the anchors together axially. The material is a bioabsorbable foam having open cells which would allow for tissue ingrowth. See col.2 lines 10-13, lines 40-42; lines 45-59; col. 5 lines 44-55.

Claims 1-8,10,13,16-18,20-29 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilson, et al.-6245090.

Gilson discloses a tissue fastener having two end anchor portions and a middle connecting portions. All three of these components are expandable. The connector can be slid polymer or have a metallic core. The material has openings to allow for tissue ingrowth. See col. 2 lines 24-28; col. 8 lines 39-55.

Claims 1,3-6,10,20-23,25,27,28 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Schneidt-5702421.

Schneidt discloses a tissue fastener having two expandable end anchors and a middle connecting portions. See col. 4 lines 55-58; col. 6 lines 10-12.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Glenn K Dawson  
Primary Examiner  
Art Unit 3731

Gkd  
20 August 2005

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